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ORIGINAL

DEPT. OF TRANSPORTATION
DOCKET SECTION

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BEFORE THE

FEDERAL AVIATION ADMINISTRATION

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FAA-98-4758-32

Docket No. FAA-19984758 Notice No. 98-17

Rin: 2120-AG13

SECURITY PROGRAMS OF FOREIGN AIR CARRIERS

COMMENTS OF

JAPAN AIR SYSTEM COMPANY, LTD.

Japan Air System Company Ltd. ("JAS") submits the following comments on the above-captioned Notice of Proposed Rulemaking ("NPRM") published in the Federal Register on November 23, 1998, 63 Fed. Reg. 225.

JAS is a foreign air carrier that has conducted limited charter passenger operations between the United States and Japan since 1989 and scheduled air passenger service between Tokyo and Honolulu since June 1991.

First, requiring unilaterally implementation of security measures under an immutable and identical standard for airports and airlines worldwide is inconsistent with international obligations of the United States under the Convention on International Civil Aviation (December 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591) ("Chicago Convention"). Article 37 of the Convention pledges collaboration among the contracting states to achieve to the highest practicable degree of uniformity in regulations on such matters, among others, as the safety of air navigation through the agency of the International Civil Aviation Organization ("ICAO"). Besides, Article 3.1.18 of Annex 17 of the Chicago Convention provides that each Contracting State is responsible for requiring air carriers providing service from that State to implement appropriate security programs. Therefore, where the standards of a contracting state meet or exceed the minimum ICAO standards, as is the case with Japan, the airlines of that contracting state cannot be forced to submit to further "competency" requirements without violating the terms of the Chicago Convention. In acting unilaterally to impose requirements under an identical standard on companies and individuals of other nations, the United States is circumventing the established procedures for

uniformity in regulation that is a fundamental principle of the Chicago Convention.

Second, the imposition of identical security measures requirements on foreign air carriers contravenes the principles of comity and violates accepted principles of international law. The principles of comity and of international law limit the extent of the FAA's regulatory authority. "Comity refers to the spirit of cooperation in which a domestic tribunal approaches the resolution of cases touching the laws and interests of other sovereign states." Societe Nationale Industrielle Aerosnatile v. United States District Court, 482 US. 522 (1987). Because of comity, it is important for those who exercise sovereign authority within their state's boundaries not to prejudice the powers or rights of another state or its subjects. The FAA's unilateral action is both contrary to the spirit of cooperation and prejudices Japan's right to determine how best to ensure the safe operation of its aircraft.

The second limit on the FAA's regulatory authority is that its regulation must be reasonable. Restatement (Third) of Foreign Relations Law Sec. 403. The identical security measures requirements sought to be imposed here goes well beyond the bounds of reasonableness and would violate international law if enacted and enforced. We believe that appropriate protection of international civil aviation against threat or risk can be achieved in a variety of approaches, and a choice needs to be made appropriately and sufficiently according to the level and the nature of risk and environment of each airport. Since FAA's requirements for an immutable and identical security standard ignore differing levels of aviation security risks of each airport, such FAA's requirements cannot be deemed reasonable. Specifically, an extensive discretion empowered to the FAA to judge levels of increasing threat concerning some particular countries would strongly conflict the sovereignty of other nations. Standards or criteria to be used for its judging increased threat levels should be open to secure the fairness of the procedures to the judgments.

Third, current measures implemented at airports in Japan meet and exceed the standard security measures required by Annex 17 to the Chicago Convention. The measures implemented in Japan are, in certain aspects, stricter than those implemented at airports in the United States. Although security measures at airports in Japan are not literally identical to those implemented at airports in the United States, the measures implemented in Japan are very adequate and sufficient compared to the international standards and the American level.

For all reasons stated above, JAS urges the FAA to find that any unilateral U.S. security requirements would not comply with the statutory mandate to work through ICAO and the legal mandate to give comity to other sovereigns and would be unreasonable and unnecessary in light of existing Japanese laws and regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'N. Sakuno', is written over a horizontal line.

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